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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,865

03/11/2004

Harold D. Beck

03-36

1719

30699

7590

06/27/2005

DAYCO PRODUCTS, LLC  
1 PRESTIGE PLACE  
MIAMISBURG, OH 45342

EXAMINER

RONESI, VICKEY M

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/799,865	<b>Applicant(s)</b> BECK, HAROLD D.	
	<b>Examiner</b> Vickey Ronesi	<b>Art Unit</b> 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 12-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/11/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

*Handwritten signature/initials*

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11, drawn to a composition, classified in class 524, subclass 564.

II. Claims 12-35, drawn to an automotive component, classified in class 428, subclass 428/36.9.

2. The inventions are distinct, each from the other because:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as non-automotive articles such as chewing gum or an adhesive and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention. It is noted that while claims 26-35 are drawn to a method of using the composition, the claims have been combined with the article claims (claims 12-25 and 36-38) given that no significant method steps are presented to distinguish the method from the article.

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3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. During a telephone conversation with Joseph Tassone on 6/10/2005 a provisional election was made WITHOUT traverse to prosecute the invention of Group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Specification*

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no support for the range 25 to 75% recited in claim 8.

7. The disclosure is objected to for the following reasons:

- Throughout the specification, an inconsistent description of the relative amounts of ingredients is observed. For example, on page 8, none of the percentages corresponding to the amounts of the ingredient indicate the basis but then on page 9 most of the ingredients are indicated in "% by weight." Please review the entire specification and indicate the basis for all percentage amounts. In amending the specification, no new matter should be introduced.

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- Both the copolymer containing two vinyl esters and the copolymer containing vinyl acetate and ethylene are incompletely described since no basis is given for the relative amounts of comonomer, i.e., is it wt % or mole %?

Appropriate correction is required.

### *Claim Objections*

8. Claims 4, 9, 10, and 11 are objected to for the following informalities:

With respect to claim 4, "said elastomer composition" lacks antecedent basis and should read as "the elastomeric composition" as recited in line 1 of claim 1.

With respect to claim 9, the word "copolymer" should be inserted after "ethylene-vinyl acetate" in line 3 of the claim to indicate that it is a polymer.

With respect to claims 10 and 11, the term "by weight" should be inserted before the ingredients "1-octanedecanamine" and "organic phosphate ester." Moreover, the word "and" should be inserted before the last component to complete the claim language.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 5, 7, 10, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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With respect to claims 5, 10, and 11, the relative amounts of vinyl acetate and vinyl laurate in the copolymer lacks basis, i.e., is it based on weight % or mole %? There is no support in the specification for the basis. In amending claims, new matter should not be introduced. The specification is deficient on similar grounds.

With respect to claims 7 and 11, the relative amounts of vinyl acetate and ethylene in the copolymer lacks basis, i.e., is it based on weight % or mole %? There is no support in the specification for the basis. In amending claims, new matter should not be introduced. The specification is deficient on similar grounds.

With respect to claim 8, the amount of additives lacks basis, i.e., is it based on weight % or volume %? In amendment the claim, new matter should not be introduced.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartman et al (US 5,173,317).

Note that the preamble “heat tolerant, pressure resistant elastomeric composition exhibiting improved hydrocarbon fluid impermeability” and “useful in the manufacture of automotive hoses, belts, seals, dampers and engine mounts which require resistance to heat, pressure and hydrocarbon fluids” has not been given patentable weight. Case law holds that

“where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation.” See *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997).

Hartman et al discloses a chewing gum composition comprising a 10-45 wt % vinyl laurate/vinyl acetate copolymer containing 10-45 wt % of vinyl laurate (col. 2, lines 23-47); polyisobutylene (col. 2, lines 48-50); and other additives such as plasticizers (col. 2, lines 57 to col. 3, line 6) and fillers, texturizers, colorants, and antioxidants (col. 4, lines 5-38). See Table 1 in Col. 4 for exemplified amounts of ingredients.

In light of the above, it is clear that Hartman et al anticipates the presently cited claims.

11. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by D’Amelia et al (US 4,968,511).

Note that the preamble “heat tolerant, pressure resistant elastomeric composition exhibiting improved hydrocarbon fluid impermeability” and “useful in the manufacture of automotive hoses, belts, seals, dampers and engine mounts which require resistance to heat, pressure and hydrocarbon fluids” has not been given patentable weight. Case law holds that “where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation.” See *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997).

D’Amelia et al discloses a chewing gum composition comprising 1.5-25 wt % of certain vinyl polymers containing copolymers of vinyl alkyl esters (col. 4, line 30 to col. 5, line 28), copolymers of ethylene and vinyl alkyl esters (col. 5, line 30 to col. 6, line 36), and mixtures

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thereof (col. 7, lines 52-53); and up to 20 wt % fillers and plasticizers (see examples, e.g., Table 1).

In light of the above, it is clear that D'Amelia et al anticipates the presently cited claims.

12. Claims 1, 2, 6, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Konno et al (US 2001/0006999).

Konno et al discloses a rubber composition suitable for a fuel system hose comprising 5-50 wt % of a vinyl chloride resin copolymerizable with at least one least monomer such as vinyl acetate and vinyl laurate (paragraphs 0019-0020); 90-55 wt % of an acrylonitrile-butadiene rubber (0011); and additives (paragraphs 0029-0032).

In light of the above, it is clear that Konno et al anticipates the presently cited claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenboom et al (US 6,464,607) in view of D'Amelia et al (US 4,968,511).

Rosenboom et al discloses a composition used in a power transmission belt comprising 0-50 parts by weight (pbw) of an elastomer such as ethylene-vinyl acetate copolymer (col. 3, lines 23-37); 0.5-3 phr fatty acids such as stearic acid; 5-250 phr of carbon black (col. 3, lines 58-67);



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0-80 phr silica (col. 4, lines 29-49); 1-100 phr plasticizer; 1-12 phr organic peroxides (col. 5, line 3-20); 1-30 phr of coagents such as triallyl cyanurate, triallyl phosphate, and n,n'-m-phenylene-dimaleimide (col. 5, lines 21-31); 1-5 phr antioxidant such as trimethyl-dihydroquinoline.

Rosenboom et al does not teach the use of a copolymer containing a first vinyl ester and second vinyl ester like presently claimed, however, note that Rosenboom et al is open to the use of any suitable reinforcing rubber, including ethylene-vinyl acetate copolymer (col. 3, lines 22-37).

D'Amelia et al discloses an elastomeric composition and teaches that any one of or a combination of (col. 7, lines 52-23) copolymers of two vinyl alkyl esters (e.g., vinyl acetate/vinyl laurate copolymer) (col. 4, line 30 to col. 5, line 29) and copolymers of ethylene and one vinyl alkyl ester (e.g., ethylene/vinyl acetate copolymer) (col. 5, line 30 to col. 6., line 36) may be used with no expectation of variation in the final product. Thus, it is the examiner's position that a copolymer of two vinyl alkyl esters and copolymer of ethylene and one vinyl alkyl ester are equivalent and interchangeable as taught by D'Amelia et al. Case law holds that the mere substitution of an equivalent (something equal in value or meaning, as taught by analogous prior art) is not an act of invention; where equivalency is known to the prior art, the substitution of one equivalent for another is not patentable. See *In re Ruff* 118 USPQ 343 (CCPA 1958).

Given that Rosenboom et al is open to the use of an suitable elastomeric rubber and given that a copolymer of two vinyl esters and a copolymer of ethylene and a vinyl ester are equivalent and interchangeable as taught by D'Amelia et al, it would have been obvious to one of ordinary skill in the art to utilize a copolymer of two vinyl alkyl esters (in particular, vinyl acetate/vinyl

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by Barclay et al in the composition of Rosenboom et al in suitable amounts and thereby arrive at the presently cited claims.

***Contact Information***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/23/2005

VT



  
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**INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet 1 of 3**Complete if Known**

Application Number	101799865
Filing Date	3-11-04
First Named Inventor	HAROLD D. BECK
Art Unit	1714
Examiner Name	Vickey Ranesi
Attorney Docket Number	03-36

**U. S. PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code <sup>2</sup> (if known)			
✓		US- 318458	05/26/1995	Fletcher	
		US- 4559973	12-24-1985	Hane et al.	
		US- 4758455	07-19-1988	Campbell et al.	
		US- 5182147	01-26-1993	Davis	
		US- 5271977	12-21-1993	Yoshikawa et al.	
		US- 5360037	11-01-1994	Lindstrom	
		US- 5398729	03-21-1995	Spurgat	
		US- 5476121	12-19-1995	Yoshikawa et al.	
		US- 6074717	06-13-2000	Little et al.	
		US- 4779673	10-25-1988	Chiles et al.	
		US- 5488975	03-06-1996	Chiles et al.	
		US- 6133367	10-17-2000	Arhart	
		US- 4349605	09-14-1982	Biggs et al.	
		US- 4381362	04-26-1982	Biggs et al.	
		US- 4477523	10-16-1984	Biggs et al.	
		US- 5191004	03-02-1993	Maringer et al.	
		US- 5225469	07-06-1993	Maringer et al.	
		US- 5256489	10-26-1993	Maringer et al.	
✓		US- 4338227	07-06-1982	Ballard	

**FOREIGN PATENT DOCUMENTS**

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		Country Code <sup>3</sup> Number <sup>4</sup> Kind Code <sup>5</sup> (if known)				

Examiner Signature	Vickey Ranesi	Date Considered	6-13-05
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Sheet 2 of 3**Complete if Known**

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		Number-Kind Code <sup>2</sup> (if known)			
VK		US- 6605327	08-12-2003	Ramey et al.	
		US- 5373870	12-20-1994	Derroire et al.	
		US- 4905735	03-06-1990	Akiyoshi	
		US- 4905734	03-06-1990	Ito	
		US- 4870995	10-03-1989	Igarashi et al.	
		US- 4842024	06-27-1989	Palinchak	
		US- 4734305	03-29-1988	Sugimoto et al.	
		US- 4261390	04-14-1981	Belofsky	
		US- 4057610	11-08-1977	Goettler	
		US- 3944453	03-16-1976	Chudgar et al.	
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				Art Unit	1714
				Examiner Name	Vickey Ronesi
				Attorney Docket Number	03-36

**NON PATENT LITERATURE DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>2</sup>
WK		KELLER, DALE R., The use of enhanced viscosity ethylene vinyl acetate polymers for extruded goods applications, 1999, Paper No. 187, Bayer Corporation, Akron, Ohio.	
WK		ROHDE, ERNST, EVA elastomers-applications and opportunities for industrial rubber goods, Rubber World, 36-40, 58, May, 1993.	
WK		KELLER, DALE R., Enhanced viscosity Levapren polymers in hose applications, 1999, Technical Information-Rubber Business Group, Bayer Corporation, Akron, Ohio.	
WK		MEISENHEIMER, Levapren Trial Product KA8784, 1998, Technical Information-Rubber Business Group, Bayer AG, Leverkusen, Germany.	

Examiner Signature	Vickey Ronesi	Date Considered	6-13-05
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	Examiner Vickey Ronesi	Art Unit 1714	Page 1 of 1

**U.S. PATENT DOCUMENTS**

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	A	US-2001/0006999	07-2001	Konno et al.	525/238
	B	US-5,173,317	12-1992	Hartman et al.	426/6
	C	US-4,968,511	11-1990	D'Amelia et al.	426/6
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	N					
	O					
	P					
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	R					
	S					
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**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
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	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

## **NEW CENTRAL FAX NUMBER**

Effective July 15, 2005

On July 15, 2005, the Central FAX Number will change to **571-273-8300**. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number. To give customers time to adjust to the new Central FAX Number, faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005.

After September 15, 2005, the old number will no longer be in service and **571-273-8300** will be the only facsimile number recognized for "centralized delivery".

**CENTRALIZED DELIVERY POLICY:** For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number.

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